

## Calendar No. 632

105TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ 105-389

### NATIONAL HISTORIC PRESERVATION ACT

OCTOBER 9 (legislative day, OCTOBER 2), 1998.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

### REPORT

[To accompany S. 2257]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2257) to reauthorize the National Historic Preservation Act, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 1, line 3, strike “**NATIONAL HISTORIC PRESERVATION ACT.**” and insert in lieu thereof, “**REAUTHORIZATION OF HISTORIC PRESERVATION FUND.**”.

2. At the end of the bill, add the following new section:

**“SEC. 2. REAUTHORIZATION OF ADVISORY COUNCIL ON HISTORIC PRESERVATION.**

“The last sentence of section 212(a) (16 U.S.C. 470t(a)) is amended by striking ‘2000’ and inserting in lieu thereof, ‘2004’.”

#### PURPOSE OF THE MEASURE

The purpose of S. 2257 is to re-authorize the National Historic Preservation Fund and the Advisory Council on Historic Preservation through the year 2004.

#### BACKGROUND AND NEED

The National Historic Preservation Act of 1966 (NHPA), Public Law 89-665, established a policy of Federal support and funding for the preservation of prehistoric and historic resources. The NHPA also encouraged State and local historic preservation

through the establishment of State Historic Preservation Offices (SHPO).

The NHPA authorized a grants-in-aid program under the Historic Preservation Fund. This program provides funding to States for historic preservation projects, to individuals for the preservation of properties listed on the National Register, and to assist State Preservation Offices with State and local historic preservation projects. These funds are authorized by Congress through the Outer Continental Shelf Lands Act. The \$150 million per year authorization expired on September 30, 1997.

The NHPA also established the Advisory Council on Historic Preservation (Council) to advise the President and the Congress on matters relating to historic preservation. The Council also reviews the policies of Federal agencies in implementing NHPA, conducts training and educational programs, and encourages public participation in historic preservation. The Advisory Council's authorization expires in 2000.

#### LEGISLATIVE HISTORY

S. 2257 was introduced June 26, 1988 by Senator Landrieu and referred to the Committee on Energy and Natural Resources. The Subcommittee on National Parks, Historic Preservation, and Recreation held a hearing on S. 2257 on September 17, 1998.

At its business meeting on September 24, 1998, the Committee on Energy and Natural Resources ordered S. 2257, favorably reported as amended.

#### COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on September 24, 1998, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 2257, if amended as described herein.

#### COMMITTEE AMENDMENT

During the consideration of S. 2257, the committee adopted an amendment which made a technical correction and re-authorized the Advisory Council on Historic Preservation through 2004.

#### SUMMARY OF S. 2257

S. 2257 amends the National Historic Preservation Act, Public Law 89-665, re-authorizing the Historic Preservation Fund and the Advisory Council on Historic Preservation through 2004.

#### COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 25, 1998.*

Hon. FRANK H. MURKOWSKI,  
*Chairman, Committee on Energy and Natural Resources,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2257, a bill to reauthorize the National Historic Preservation Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Deborah Reis (for federal costs) and Leo Lex (for the state and local impact).

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

#### *S. 2257—A bill to reauthorize the National Historic Preservation Act*

Summary: S. 2257 would extend through fiscal year 2004 annual deposits of \$150 million to the Historic Preservation Fund (HPF). Authority for such deposits, which consist of receipts earned from oil and gas development on the Outer Continental Shelf, expired at the end of fiscal year 1997. The National Park Service uses amounts appropriated from the HPF for grants to the National Trust for Historic Preservation, to state, local, and tribal governments, and to nonprofit and other organizations. The bill also would extend through fiscal year 2004 the authorization of \$4 million a year for the Advisory Council on Historic Preservation. This sum is currently authorized to be appropriated (from the general fund of the U.S. Treasury) through fiscal year 2000.

Assuming appropriation of the amounts deposited into the HPF each year, and assuming appropriation of the authorized amounts for the Advisory Council on Historic Preservation, CBO estimates that enacting S. 2257 would result in additional discretionary spending of \$570 million over the 1999–2003 period. The legislation would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. S. 2257 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Because state, local, and tribal governments receive grants from the Historic Preservation Fund, the bill would permit future funding for state, local, and tribal historic preservation projects.

Estimated cost to the Federal Government: The \$150 million to be deposited into the HPF under S. 2257 is the same amount that was deposited to the fund annually from 1980 through 1997, but is significantly higher than the \$30 million to \$50 million generally appropriated (from the HPF) for each year. In recent years, annual appropriations for the advisory council have been about \$3 million. The estimated budgetary impact of S. 2257 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002	2003
SPENDING SUBJECT TO APPROPRIATION						
Spending under current law:						
Budget authority/authorization level <sup>1</sup> .....	44	4	4	0	0	0
Estimated outlays .....	44	26	12	2	0	0
Proposed changes:						
Authorization level .....	0	150	150	154	154	154
Estimated outlays .....	0	40	85	140	145	160
Spending under S. 2257:						
Budget authority/authorization level .....	44	154	154	154	154	154
Estimated outlays .....	44	66	97	142	145	160

<sup>1</sup> The 1998 level includes \$41 million appropriated from the HPF and \$3 million appropriated for the Advisory Council on Historic Preservation. The 1999 and 2000 levels are the amounts authorized under current law for appropriation to the council.

**Basis of Estimate:** For purposes of this estimate, CBO assumes that the entire amounts deposited into the HPF or authorized for the advisory council under S. 2257 would be appropriated for each fiscal year. Outlay estimates are based on historical spending patterns for council activities and HPF programs. We adjusted the observed outlay rates for the purposes of projecting future HPF outlays because the higher appropriations assumed in this estimate—relative to historical appropriation levels—would likely cause some delays in finding matching shares for certain grants. The table does not include any potential spending from amounts deposited to the HPF in the past that have not yet been appropriated. Such funds—about \$2.3 billion—will remain available for appropriation under existing law even in the absence of legislation.

**Pay-as-you-go considerations:** None.

**Estimated impact on State, local, and tribal governments:** S. 2257 contains no intergovernmental mandates as defined in UMRA. Because state, local, and tribal governments receive grants from the Historic Preservation Fund, the bill would permit future funding for state, local, and tribal historic preservation projects.

**Estimated impact on the private sector:** S. 2257 contains no new private-sector mandates as defined in UMRA.

**Previous CBO estimate:** On April 7, 1998, CBO prepared an estimate for H.R. 1522, a bill to extend the authorization for the National historic Preservation Fund, and for other purposes, as ordered reported by the House Committee on Resources on March 25, 1998. The authorization levels contained in the two bills are identical, as are the two estimates.

**Estimate prepared by:** Federal costs: Deborah Reis; Impact on State, local, and tribal Governments: Leo Lex.

**Estimate approved by:** Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2257. The bill is not a regulatory measure in the sense of imposing government-established standards of significant economic responsibilities on private individuals and business.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from enactment of S. 2257, as ordered reported.

#### EXECUTIVE COMMUNICATIONS

On September 3, 1998, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 2257. These report had not been received at the time the report on S. 2257 was filed. When these reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony of the Department of the Interior at the Subcommittee hearing follows:

#### STATEMENT OF MAUREEN FINNERTY, ASSOCIATE DIRECTOR, PARK OPERATIONS AND EDUCATION, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman, thank you for the opportunity to present the Department's views on S. 2257 and H.R. 1522, bills to extend authorization for the Historic Preservation Fund, and for other purposes.

We strongly support the reauthorization of the Historic Preservation Fund through 2004 addressed in S. 2257 and H.R. 1522. We also strongly support the reauthorization of the Advisory Council on Historic Preservation through 2004 contained in H.R. 1522. However, we have serious concerns with amendments (1) and (4) of H.R. 1522, and we urge that the language be deleted.

The Historic Preservation fund, established by Section 108 of the National Historic Preservation Act, is the authority under which Congress appropriates matching grant funds to States, tribes, local governments, and the National Trust for Historic Preservation to carry out federally mandated activities under the national historic preservation program. The Historic Preservation Fund grant program supports the identification and protection of the Nation's irreplaceable historic and archaeological resources for future generations of Americans. The Historic Preservation Fund grant program is highly cost-effective and remains the cornerstone of the national federal-Tribal-State-local-private partnership in historic preservation. The Fund has had strong bipartisan support and has been reauthorized three times since its creation in 1976. Reauthorization of the Historic Preservation Fund has no direct budgetary impact in that outlays occur solely through the appropriation process. The Fund is a good value for all of us.

We support amendment (9) of H.R. 1522, which reauthorizes the Advisory Council on Historic Preservation through 2004. We believe the Council serves a critical role in the national historic preservation partnership. The Advisory Council continues to be a vital part of the historic preservation success story in this country. We are pleased

that this amendment puts the reauthorization of the Advisory Council and the Historic Preservation Fund on a parallel rather than staggered schedule.

Although we support several amendments in H.R. 1522, we have serious concerns with two amendments offered in this legislation. First, we believe amendment (1) weakens the Secretary of the Interior's statutory mandate in certain situations to make determinations of eligibility for listing in the National Register of Historic Places. The Secretary, acting through the Keeper of the National Register, is currently required to assess a property's National Register eligibility (or lack of it) when that property cannot be listed on the National Register because the owner objects to its listing. Amendment (1) would make this assessment optional rather than required as it exists now in statute. This determination of eligibility does not restrict the owner's property rights and does not result in a de facto listing. Making the assessment optional creates the potential to politicize the current system that has served the nation well for more than thirty years.

Second, amendment (4) restricts the Secretary's authority to set certain minimum professional requirements for State and tribal historic preservation office staff carrying out the national historic preservation program. Such minimum requirements are in place to ensure professional competency, credibility, and consistency of the federal program to customers and citizens nationwide. The existing requirements are neither onerous nor burdensome and have been accepted practice within this national program for more than twenty years. Existing regulations for States require only that each state staff includes one professionally qualified historian, archeologist, and architectural historian. There is no other federal direction on which required disciplines are needed to manage this federally funded program in 59 programs nationwide. We believe that current regulations give the National Park Service the flexibility to waive these minimum requirements if they do not suit unique situations and that the current system works well and provides a minimal professional credibility nationwide for our citizens while allowing for flexibility in approach.

Again, I reiterate the Department's strong support of the reauthorization of the Historic Preservation Fund through 2004 contained in both bills and the reauthorization of the Advisory Council on Historic Preservation through 2004 stated in H.R. 1522. However, we recommend that amendments (1) and (4) of H.R. 1522 be deleted.

Mr. Chairman, this concludes my prepared remarks. I would be pleased to respond to any questions you and other members of the subcommittee may have.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S.

2257, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman).

(Public Law 102–575, October 30, 1992)

**SEC. 4011. EXTENSION OF AUTHORIZATION FOR HISTORIC PRESERVATION FUND.**

Section 108 of the National Historic Preservation Act (16 U.S.C. 470h–2) is amended by striking “1992” and inserting **["1997"]** “2004”.

\* \* \* \* \*

**SEC. 4017. AUTHORIZATION OF APPROPRIATIONS FOR ADVISORY COUNCIL ON HISTORIC PRESERVATION.**

The Council shall submit its budget annually as a related agency to the Department of the Interior. There are authorized to be appropriated for the purposes of this part not to exceed \$4,000,000 in each fiscal year 1997 through **[2000]** 2004.

